

HAYDON & ATWELL.

MARCH 23, 1860.—Ordered to be printed.

Mr. OLIN, from the Committee on Military Affairs, made the following

REPORT.

*The Committee on Military Affairs, to whom was referred the petition of Haydon & Atwell, having had the same under consideration, report :*

That the petitioners state, about the month of September, 1814, they made a parol contract with the firm of Ward & Taylor, then contractors with the United States government, for the supply of commissary stores for the army under the command of General Andrew Jackson, at New Orleans, to deliver at that place for the use of the army, *on the 1st of March, 1815*, five hundred barrels of pickled pork, for which said Ward & Taylor agreed to pay them the sum of ten dollars per barrel. They further allege that between the 20th and last of January, 1815, they had in New Orleans a large quantity of pork, partly in bulk and partly in barrels, intended for the New Orleans market, and not for delivery under the contract with Ward & Taylor, and that the pork in New Orleans was then worth eighteen dollars per barrel ; that they had upon the river at this time other pork with which they intended to fill the contract with Ward & Taylor, and which in fact arrived in New Orleans before the 1st day of March, 1815.

The petitioners further allege that after having sold some 20,000 pounds of their pork to the army agents, *one of the army contractors* demanded of the petitioners the surrender of 500 barrels of pork, in compliance with the contract to fall due the 1st of March. This, the petitioners state, they refused, but offered to the army agent to deliver to him the 500 barrels, or all the pork they then had at New Orleans, on the following terms, viz : if the 500 barrels contracted to be delivered were not ready for delivery by the 1st of March, that quantity of 500 barrels should be considered paid by that much of the pork then delivered ; and for any amount over 500 barrels then delivered, government should pay the then market price. If the petitioners delivered 500 barrels more on or before the 1st of March, the government should

take that at the rate of ten dollars per barrel, and pay the market price for the pork previously delivered.

They further allege that the army agent rejected their offer, and forbid them to sell their pork until they first complied with the government contract to fall due the 1st of March, and threatened to call a squad and take the pork by force, and to report their refusal to deliver to General Jackson.

They further state that at this time martial law, by proclamation of General Jackson, was established at New Orleans.

They further state that, by the advice of friends, they were induced to make a personal application to General Jackson, who, after the facts of the case had been laid before him, threatened to have the petitioners hanged if they sold a pound of pork until the government contract was complied with, telling them, however, they might keep their pork at their own risk until the 1st of March if they desired to do so; that, thus situated and pressed by the army agents, the petitioners were compelled to and did surrender up the quantity of 500 barrels of pork to the army agents in discharge of the contract with Ward & Taylor.

The petitioners further state that the pork intended to fulfil the army contract did arrive in New Orleans before the 1st of March; but upon its arrival pork had already fallen below ten dollars per barrel, and the government refused to receive it, and the same was sold at a great sacrifice.

The above is believed to be a full statement of all the material facts contained in the petition in reference to the alleged violation of the pork contract. The petition bears date January, 1849. Prior to this, and as early as 1834, the petitioners presented their memorial to Congress upon this same subject, in which memorial they state that in the fall or winter of 1814 they made a contract with Ward & Taylor, who were contracting for supplies for the army on the New Orleans expedition; that "they agreed and bound themselves to deliver to said Ward & Taylor, for the government, five hundred barrels of pork at New Orleans at some time about the 20th of March, 1815, as all as your memorialist can recollect."

They also state that at the time the 500 barrels of pork were taken by the government the pork could have been sold to individuals for \$16 50 per barrel.

The petitioners produce, in confirmation of the facts stated in the petition, the affidavits of John D. Colmisneil and John S. Simmons, both detailing substantially all the material facts stated in the petition, and both stating the 1st day of March as the day fixed for the performance of the contract.

Neither of these witnesses, however, state whether the contract between Ward & Taylor with the government was in writing or by parol, or how or in what way they obtained a knowledge of its terms; and the same remark is equally true of the contract between Ward & Taylor and the petitioners. It is quite too obvious to remark that testimony as to the precise terms of a parol contract, resting in the mere recollection of witnesses who had no motives or interest in fixing them in their memory, after the lapse of upwards of thirty

years, is entitled to very little weight in arriving at the true nature of the transaction.

The petitioners produce as evidence of the merit of their claim the written statement of Benjamin Taylor, one of the firm of Ward & Taylor, with whom the petitioners contracted. Taylor states that the firm of Ward & Taylor entered into a contract with Messrs. Haydon & Atwell for the delivery in New Orleans of five hundred barrels of pork, for the use of the troops of the United States, to be *delivered between two periods within the ensuing season of delivery at said point, at ten dollars per barrel*; that previously to the forwarding of the pork Messrs. Haydon & Atwell, or one of them, wrote to Ward & Taylor that their pork was in readiness for shipment, *but would not be delivered according to contract*, unless Ward & Taylor would release them from the delivery of one-half of the quantity contracted for, the price of pork having risen, and requesting an answer to their letter before the pork was shipped; that Ward & Taylor did not answer their letter, but *wrote to their agent* in New Orleans—Mr. John Brant, since deceased—to take the most efficient steps to enforce the contract; that Ward & Taylor were informed by their agent, Brant, that the pork arrived in New Orleans previous to *the latest period designated* in the contract for the delivery of the pork; and that upon its arrival a controversy arose between Brant, the agent of Ward & Taylor, and Haydon & Atwell, as to the delivery of the pork, but that they finally delivered the pork to Brant, having been forbidden by General Jackson to sell the pork to any other person.

The Committee on Claims, to whom this matter was heretofore referred, called upon General Jackson, then President of the United States, for a statement of the circumstances attending the delivery of the pork; and in his reply, dated February 4, 1834, he says: "In the years 1814 and 1815 Messrs. Ward & Taylor, of Kentucky, were the contractors with the government for the supply of all the rations that might be necessary for the troops in the then 7th military division, which I commanded. In the fall of the year 1814, when advised of the meditated attack of the enemy on the Lower Mississippi, with an overwhelming force, I made a requisition for a large supply of rations on Ward & Taylor, for the troops ordered from Kentucky, Tennessee, and Louisiana. On the first of December, 1814, I reached New Orleans, when Mr. John Brant reported himself to me as the agent of the contractors, Ward & Taylor, at that station, and not as the agent of the government, as is untruly stated in the petition. An order was given by me to Mr. Brant to report the quantity of provisions in deposit in the stores of the contractors, and the quantity in transitu, which he did; and from which it appeared that a full supply was on hand and in transitu, agreeably to the requisition. Confiding in the report of Brant, agent for the contractors, and being constantly engaged on the levees watching the movements of the enemy, I heard nothing more on the subject of the supply of provisions until the latter part of the month of January, or first part of February, when Brant reported to me that the supply was nearly exhausted, and that the men who were under contract for the delivery of a large quantity of pork to him, as the agent of Ward & Taylor, had

arrived with part of it only, and had refused to deliver *this part* unless he would exonerate them from the balance of the contract; and that his express, sent up to Natchez to hasten the supplies, had informed him that the remainder of the boats with the pork had stopped at that place. I believe the petitioners were the men named to me by the contractors' agent, Mr. Brant. I immediately told the agent if the necessary supply was not in deposit by the next day, I should order the quartermaster to purchase, and view Ward & Taylor as having failed to comply with the requisition, and of course responsible for the excess of price which he might pay on account of the government, being left to their remedy for damages against those who had contracted to furnish them with supplies; and that thus, if the petitioners had resolved upon violating their contract with Ward & Taylor, they would find it a bad speculation in the end. Under these circumstances, I requested Mr. Brant to bring them with him to see me. He did so. I told them their situation and danger, and notified Mr. Brant in due form of law, in their presence, that if the provisions were not in deposit the next day the quartermaster would be ordered to purchase, and Messrs. Ward & Taylor be considered as having failed. Mr. Brant, the next day, made report that a large supply had that morning been deposited, and that the balance was in transitu from Natchez; that although the petitioners' contract had expired, he had, on their agreement to deliver what had arrived, given them time to deliver the remainder, which had been stopped by them at or below Natchez."

General Jackson further adds: "It was believed that it was the high price of pork in the market which induced the petitioners to attempt an evasion of their contract with Ward & Taylor, until they found that all the damages resulting from the failure would ultimately fall upon themselves."

It is not a little extraordinary that a claim so utterly destitute of merit should be persistently urged upon the attention of Congress. The government had entered into no contract with Atwell & Haydon, nor assumed any liability to them. It could scarcely be unknown to the petitioners that Brant was not the agent of the government or the army, but simply the agent of the contractors, Ward & Taylor; but it seems to have been thought necessary, in order to give this claim the appearance of equity, to disguise the true relation of Brant to this transaction. The government having entered into no contract with the petitioners, had, of course, no claim upon them, or control over their property; and if by the terms of their contract with Ward & Taylor they were not bound to deliver the pork until the 1st of March, 1815, they were at full liberty to retain it, and neither the government nor Ward & Taylor could interfere with them. From all the evidence adduced, it is quite probable that the pork was due on the contract at or before the time of its actual delivery to the agent, Brant; but were that fact otherwise, it is undisputed that Brant *claimed* the pork as due upon the contract, and that the petitioners finally acquiesced in that claim, and delivered the pork. After having done this, it would seem to be quite too late to set up any demand, either in law or equity, on account of the pork not being then due upon the contract,

even as against Ward & Taylor, much less as against the government, which had contracted no relations with them.

There is no ground whatever for sustaining this claim, unless it be placed upon a forcible seizure of this property, in violation of every principle of law, by the arbitrary will of General Jackson, or that Haydon was forced by threats of violence to his person, made by General Jackson, to deliver the property to Brant, the agent of Ward & Taylor. Either of these propositions involve charges of so grave a character against the official conduct of a man whose name is so generally revered by his countrymen that your committee would assent to their truth only upon the closest and most satisfactory evidence. It will be observed that the statement of Benj. Taylor is furnished as early as January, 1835, and that too, by the petitioners. In that statement it appears that the petitioners had made up their *minds to violate their contract*. The letter of General Jackson to Hon. E. Whittlesey bears date in January, 1834. This letter details with great minuteness all the circumstances attending the controversy respecting the delivery of this pork. It is quite probable that the contents of that letter, as well as those of the statements of Benjamin Taylor, have been brought to the knowledge of the petitioner, Haydon, yet neither in his memorial of 1849, nor in his proofs laid before the committee, does he controvert or deny the most material facts stated in those papers. Great stress was laid upon the letter of J. Brant, dated 31st January, 1815, by the counsel for the claimants, who appeared before the committee. The following is a copy :

“SIR: You will please deliver to the bearer the pork you promised, say 60 or 70 barrels, or as much as you can conveniently spare, which shall either be arranged on account of the contract made between Haydon & Atwell with Ward & Taylor, contractors for the delivery of that article to me here, or I will pay you the cash for said pork, at the present market price, when called for.

“Respectfully, your obedient servant,

“J. BRANT.

“Capt. ATWELL.”

The explanation of this seems very apparent. Captain Atwell, it is quite clear, was not the Atwell of the firm of Haydon & Atwell, the latter not then being in New Orleans, (see affidavit of John S. Simmons, and also the statement of Benjamin Taylor,) but was a person in command, probably, of one of the boats containing the pork. Haydon & Atwell had made up their minds to violate their contract, and probably instructed Captain Atwell not to deliver the pork; and Brant, in want of provision to fulfil Ward & Taylor's contract, writes the letter above quoted, thereby getting possession of probably 100 barrels of pork, (see letter of Haydon & Atwell to Willis Green, dated 26th of November, 1840,) and leaving the question as to whether the pork so delivered should be applied upon the contract or paid for at the then market price, to be adjusted thereafter.

It is the misfortune of this case that the proofs adduced in support of the claim are so utterly conflicting and contradictory that it is impossible to place reliance upon them. For example, Mr. George L.



Robards makes affidavit, in 1859, "that he knows Joseph Atwell, about that time, (date of the battle of New Orleans,) had flat-boat loads of pork at New Orleans after the battle a few days, and that the commanding general, Andrew Jackson, impressed about five hundred barrels of the said pork, for which he only received — dollars per barrel, when pork was worth, and he could have sold it for, \$18 per barrel."

It is difficult to perceive why such a paper as the one last quoted is furnished in support of this claim, when every other paper in this case shows it to be untrue.

Again: John Simmons swears that after the return of Haydon from Jackson's headquarters "he (Haydon) said he had a mind not to deliver the pork, and risk the consequences; but concluded to deliver the pork, and directed the commander of each boat to roll out one hundred barrels of pork on the levee, and the 500 barrels were immediately rolled out and received by the army contractors, and, as deponent believes, was received by the government agents in satisfaction of the contract, that was not due until the 1st of March of that year," &c.

What reliance should be placed on this statement of Mr. Simmons will be readily seen on reading the memorial of the petitioners, presented to Congress in 1840. In that memorial the petitioners state "that some time in the month of February, while the army was at New Orleans, they were applied to for the delivery of the pork which was to fall due under the contract, by J. Brant, *the agent of Ward & Taylor*; but as pork was at that time worth \$18 per barrel, these petitioners refused to deliver it unless they could receive for it the market price at that time. As before stated, they had a much larger quantity of pork purchased and on its way to New Orleans than was necessary to comply with the contract with Ward & Taylor, and they did not expect or intend to deliver any part of the pork in bulk in discharge of the contract; but inasmuch as the said Brant wrote to these petitioners that he would either pay them the market price or credit the quantity on the contract, these petitioners delivered to him, for the use of the army, one hundred barrels, supposing that they would receive for it the then market price. *This one hundred barrels was all that had at that time arrived in New Orleans.* A short time afterwards, and before the contract fell due, they received at New Orleans a large quantity of pork in bulk, and were selling the same at a very high price, from twelve to fifteen cents per pound." The memorial then narrates the interview with General Jackson, substantially as in the other memorials mentioned, and proceeds to say: "These petitioners state that in consequence of the compulsion of General Jackson, they procured barrels and delivered the quantity of pork called for in the contract, deducting the one hundred barrels which had, as before stated, been delivered to Brant," &c.

Thus it will be seen that instead of the hurried delivery of 500 barrels of pork by Mr. Haydon, under the fear of a sudden and disagreeable death, which Mr. Simmons thinks he witnessed, it turns out that the first 100 barrels were delivered in an amicable way, under the expectation, as the petitioners say, of being paid for at the market

price ; that the remainder reached New Orleans in bulk, and after it so came, barrels were there procured and it was packed and delivered to the agent, Brant. This case has thus been minutely examined, not by reason of any difficulty or doubt as to the disposition which ought to be made of it, but to enable those upon whose attention it may be hereafter, as it has been heretofore, pressed to dispose of it without much labor.

Two other claims are set up by the memorialists, but as no testimony is adduced in respect to them, except such as was presented to the Committee on Claims in February, 1836, (see report 296,) this committee, concurring in the conclusions then arrived at, think no relief should be granted in respect to them.

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